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Bjorn Crona

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EXAMINER

HOANG, PHI

ART UNIT

PAPER NUMBER

2628

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

tammy@ppglaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,803	<b>Applicant(s)</b> CRONA, BJORN	
	<b>Examiner</b> PHI HOANG	<b>Art Unit</b> 2628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 29 October 2009 have been fully considered but they are not persuasive.
2. With regard to the Korytar (Artopik) reference, Applicant states, "The website itself indicates that the last edit date was July 28, 2004, which is AFTER the priority date of the present application of February 3, 2004." However, with reference to Figure 1 of Korytar, the Artopik website was archived by the Internet Archive WaybackMachine with an archive date of December 10, 2002. Figure 2 of Korytar displays the archived page with Date of last edit of December 8, 2002. This can be verified by entering the following URL into an internet capable browser: <http://www.archive.org> and entering the URL of the Artopik website: <http://artopik.rksoft.sk> in the Web section and then clicking "Take Me Back". There, archived copies of the webpage can be found from as far back as 2002 and 2003.
3. Furthermore, with regard to claims 1, 4, and 6, Applicant states Korytar (Artopik), "...relates to creating patterns for cross-stitch embroidery, i.e. not to creating patterns for bead-inlaid plates. However it is respectfully submitted that one of ordinary skilled in the art would not have been led to use products or technologies for cross-stitch embroidery for the purpose of bead-inlaid plates, i.e., these are not analogous arts." However, the claimed invention, like Artopik is directed toward creating a color pattern to be then printed. The use of a finally printed pattern, be it for a layout for a bead-inlaid plate or cross embroidery, is a conclusive step that does not affect the operations of

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creating and printing a pattern.

Furthermore, Applicant states Korytar (Artopik) does not disclose "selecting ... an area of the shown picture" and "selecting a format". However, Figures 4-6 shows a portion of the image has had its color changed (the right side of the car). Therefore, Korytar (Artopik) discloses "selecting ... an area of the shown picture". Figure 3 discloses files in a specific format. It would have been obvious to save a grid pattern in a format that can be editable and printed for use. Therefore, Korytar (Artopik) discloses "selecting a format".

Since the position of the Examiner on claims 1, 4, and 6 is maintained, the Examiner's position on claims 2, 3, 5, and 7-9 is also maintained.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. The term "relatively low" in claim 10 is a relative term which renders the claim indefinite. The term "relatively low " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant states, "In creating bead-inlaid plates a very restricted number of colour hues is available, e.g., 30 different hues as described in the text of the present application." However, the specification only describes that beads can be provided in a number of

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colors ranging from 1-30. No reference value is noted that would indicate that a number of colors from 1-30 is a “relatively low” number.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morito (US 6,003,577) in view of Korytar (Artopik).

3. Regarding claim 1, Morito discloses a method of creating a pattern for a bead-inlaid plate using a computer, comprising the steps of: providing a colour picture, (Column 1, lines 6-10 and column 3, lines 10-19)

converting the colour picture to a digital image file suited for electronic processing, (Column 3, lines 10-19, a picture captured by a digital camera is in a digital format)

dividing the selected area of the shown picture into a grid of intersecting lines including squares of a uniform size, each of said squares corresponding to a bead on the bead-inlaid plate, so that the grid of intersecting lines also corresponds to the selected format, (Figure 2 and column 3, lines 26-45)

determining according to a predetermined algorithm for each square that colour among colours available for beads which best represents or agrees with the colour of the square, (Column 4, lines 18-27)

Morito does not clearly disclose selecting on the monitor, using a user input device of the computer, an area of the shown picture for which a pattern is to be created; selecting a format of a bead-inlaid plate; showing on the monitor a picture of the selected area including the colour determined for the square in each square, and finally printing a pattern including the selected colours for the bead-inlaid plate.

Korytar discloses selecting on the monitor, using a user input device of the computer, an area of the shown picture for which a pattern is to be created (Figures 4-6, a portion of the image has had its color changed (the right side of the car))

selecting a format of a bead-inlaid plate; (Figure 3, format for the pattern)

showing on the monitor a picture of the selected area including the colour determined for the square in each square (Figure 4, software using a computer and associated display)

and finally printing a pattern including the selected colours for the bead-inlaid plate (Figure 7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Morito to provide a user interface for designing pattern templates as disclosed by Korytar because a user can design a pattern template according to their preferences on the appearance.

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4. Regarding claim 2, Morito in view of Korytar (Figure 6) discloses the colour quantities include lightness, colour saturation and colour scale.

5. Regarding claim 4, Morito discloses a device for forming a pattern for a bead-inlaid plate, comprising a computer including a receiving device for a digital image file suited for electronic processing, the computer including a unit for showing on the monitor associated with the computer the picture that corresponds to the digital image file, (Column 1, lines 6-10) and column 3, lines 10-19)

a unit for dividing the selected area in the shown picture in a grid of intersecting lines including squares of a uniform size which each correspond to a bead on the bead-inlaid plate, so that the grid of intersecting lines also correspond to the selected format, (Figure 2 and column 3, lines 26-45)

a unit for determining, according to a predetermined algorithm, for each square that colour hue among colour hues available for the beads which best represents or agrees with the colour hue in the square, (Column 4, lines 18-27)

Morito does not clearly disclose a unit, for selecting on the monitor, using one of the user input devices on the computer, an area of the shown picture for which a pattern is to be formed; a unit for selecting a format of a bead-inlaid plate; a unit for selecting a format of a bead-inlaid plate, a unit for showing on the monitor a picture of the selected area including the colour determined for each square in each square, and a unit for finally printing a pattern including the selected colours for the bead-inlaid plate.

Korytar discloses a unit, for selecting on the monitor, using one of the user input devices on the computer, an area of the shown picture for which a pattern is to be

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formed (Figures 4-6, a portion of the image has had its color changed (the right side of the car))

a unit for selecting a format of a bead-inlaid plate (Figure 3, format for the pattern)

a unit for showing on the monitor a picture of the selected area including the colour determined for each square in each square, (Figure 4, software using a computer and associated display)

and a unit for finally printing a pattern including the selected colours for the bead-inlaid plate (Figure 7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Morito to provide a user interface for designing pattern templates as disclosed by Korytar because a user can design a pattern template according to their preferences on the appearance.

6. Regarding claim 5, Morito in view of Korytar (Figure 8) discloses the step of showing on the monitor a picture of the selected area includes that for each square a picture of a bead having the determined colour hue.

7. Regarding claim 6, Morito discloses converting a color picture to a digital image file which is suitable for electronic processing; (Column 3, lines 10-19, a picture captured by a digital camera is in a digital format)

identifying, for each of said squares, a color among those colors available for beads, which best represents a color of the square (Column 4, lines 18-27).



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Morito does not clearly disclose displaying, on a monitor associated with the computer, a picture that corresponds to the digital image file; selecting, on the monitor using a user input device of the computer, an area of the displayed picture for which a pattern is to be created; selecting a format of a bead-inlaid plate; dividing the selected area of the displayed picture into a grid of intersecting lines including squares of a uniform size, each of said squares corresponding to a bead on the bead-inlaid plate, so that the grid of intersecting lines also corresponds to the selected format; displaying, on the monitor, a picture of the selected area including the colour determined for the square in each square, modifying, on the monitor using a user input device of the computer, at least one of: a color attribute associated with the picture of the selected area and the color in an individual square, and printing a pattern including the selected colors for the bead-inlaid plate.

Korytar discloses displaying, on a monitor associated with the computer, a picture that corresponds to the digital image file; (Figures 3 and 4)

selecting, on the monitor using a user input device of the computer, an area of the displayed picture for which a pattern is to be created; (Figures 4-6, a portion of the image has had its color changed (the right side of the car))

selecting a format of a bead-inlaid plate; (Figure 3, format for the pattern)

dividing the selected area of the displayed picture into a grid of intersecting lines including squares of a uniform size, each of said squares corresponding to a bead on the bead-inlaid plate, so that the grid of intersecting lines also corresponds to the selected format; (Figures 4 and 8)

displaying, on the monitor, a picture of the selected area including the colour determined for the square in each square, (Figure 4)

modifying, on the monitor using a user input device of the computer, at least one of: a color attribute associated with the picture of the selected area and the color in an individual square, (Figure 5, original squares changed to green squares)

and printing a pattern including the selected colors for the bead-inlaid plate (Figure 7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Morito to provide a user interface for designing pattern templates as disclosed by Korytar because a user can design a pattern template according to their preferences on the appearance.

8. Regarding claim 7, Morito in view of Korytar (Figure 8, number of squares for determine number of beads) discloses selecting a number of beads to be laid in the bead-inlaid plate.

9. Regarding claim 8, Morito in view of Korytar (Figure 8, number of squares determines number of beads) selecting a number of beads to be laid horizontally and a number of beads to be laid vertically.

10. Regarding claim 10, Morito in view of Korytar (Figure 6) discloses said colours available for beads is a relatively low number of predetermined color hues.

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11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morito (US 6,003,577) in view of Korytar (Artopik) and further in view of Braun et al. (US 2005/0089247 A1).

12. Regarding claim 3, Morito in view of Korytar discloses all the limitations as discussed in claim 1.

Morito in view of Korytar does not clearly disclose discloses the steps of selecting format and dividing the selected area include the substeps that an initial format is first selected, that thereupon the selected area is divided according to the initial format, that on the monitor a picture including a grid of intersecting lines drawn according to the initial format is shown, that on the monitor, using a user input device of the computer, the initial format is changed to a changed format, that thereupon the selected area is divided according to the changed format, these substeps being repeated until a desired format has been obtained.

Braun discloses the steps of selecting format and dividing the selected area include the substeps that an initial format is first selected, that thereupon the selected area is divided according to the initial format, that on the monitor a picture including a grid of intersecting lines drawn according to the initial format is shown, that on the monitor, using a user input device of the computer, the initial format is changed to a changed format, that thereupon the selected area is divided according to the changed format, these substeps being repeated until a desired format has been obtained (Page 3, paragraph 0047, the image is cropped with a change in dimensions if the image exceeds the dimensions).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Morito in view of Korytar to divide a picture to maintain the proper aspect ratio as disclosed by Braun because a resized image can be properly used by the invention of Morito in view of Korytar to properly divide the image into a grid of colors.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morito (US 6,003,577) in view of Korytar (Artopik) and further in view of Niki (US 2003/0050873).

14. Regarding claim 9, Morito in view of Korytar discloses all the limitations as discussed in claim 6.

Morito in view of Korytar does not clearly disclose printing a picture of said pattern including information associated with a number of beads of each color hue required to fabricate said pattern as a bead-inlaid plate.

Niki discloses determining the number of colors used by each pixel in order to determine its consumption of colors (Page 6, paragraph 0087, it would have been obvious to print the information using known means).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Morito in view of Korytar to monitor the use of colors as disclosed by Niki because users can determine the amount of color that needs to be consumed and maintain or acquire the proper stock.

***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHI HOANG whose telephone number is 571-270-3417. The examiner can normally be reached on Mon-Fri, 8:30am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xiao Wu can be reached on 571-272-7761. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phi Hoang/  
Examiner, Art Unit 2628  
January 28, 2010

/XIAO M. WU/  
Supervisory Patent Examiner, Art Unit 2628